

UNITED STATES OF AMERICA

V.

DAVID M. HICKS

**DEFENSE NOTICE OF  
MOTION FOR**

## Bill of Particulars

20 September 2004

1. The Defense in the case of the *United States v. David M. Hicks* moves to compel the government to provide a Bill of Particulars detailing the actions of Mr. Hicks which subject him to criminal liability under the referred charges. As presently constituted, the charges fail to provide specifics with respect to any offense triable by military commission – regarding any agreement under the Conspiracy charged in Count One, and/or the objects of such conspiracy; the conduct underlying the varying theories of liability set forth in Count Two (Attempted Murder by an Unprivileged Belligerent), and/or the intended victims of such alleged conduct, and/or the time frame in which such conduct allegedly occurred; and the conduct underlying the charge of Aiding the Enemy as alleged in Count Three.
2. Consequently, since the charges lack any specificity, they do not adequately inform Mr. Hicks of the nature of the charges against him with sufficient precision to enable the defense to prepare for trial, to discern with any certainty potential theories of Mr. Hicks’ alleged criminal liability, and to protect against future re-prosecution for the same offense(s) (double jeopardy).
3. Mr. Hicks, through counsel, has previously requested such a Bill of Particulars. However, the government has summarily refused to provide any of the requested Particulars. Accordingly, this motion is required, and seeks the following Bill of Particulars:
  - I. With respect to Count One (Conspiracy), Mr. Hicks demands the following Particulars:
    - a. identify any and all attacks, and/or planned attacks, upon civilians or civilian objects to which Mr. Hicks is alleged to have agreed;
    - b. identify the person or persons whom Mr. Hicks allegedly agreed to murder, or
    - c. identify where and when any and all alleged overt acts in furtherance of the alleged conspiracy occurred;
    - d. set forth any and all facts that would establish Mr. Hicks’s alleged status as an unprivileged belligerent;
    - e. identify the specific property Mr. Hicks allegedly agreed to destroy;
    - f. identify the specific acts of terrorism that Mr. Hicks agreed to commit, and/or in which he agreed to participate, and/or of which he had advance knowledge, and to the commission of which he agreed in advance;
    - g. state the precise date and time for each of the occurrences referred to in the foregoing Particulars; and
    - h. state the location for each occurrence referred to in the foregoing Particulars;

- i. identify how the alleged conduct of Mr. Hicks set forth in subparagraphs a-m of Count One contributed to any offense triable by military commission, and/or any conspiracy to commit any such offense(s).
- II. With respect to Count Two (Attempted Murder by an Unprivileged Belligerent), Mr. Hicks demands the following Particulars:
  - a. identify the specific conduct by Mr. Hicks that would establish his liability for Count Two under each of the five (5) potential theories of liability set forth in Count Two;
  - b. identify the person or persons that Mr. Hicks allegedly attempted to murder;
  - c. identify the specific conduct in which Mr. Hicks allegedly engaged to cause the death of such person or persons, and/or attempted to do so;
  - d. identify the facts that establish that Mr. Hicks did not enjoy “combatant immunity;”
  - e. identify the precise date and time for each such instance of conduct referred to in the foregoing Particulars; and
  - f. identify the location of each such instance of conduct referred to in the foregoing Particulars.<sup>1</sup>
- III. With respect to Count Three (Aiding the Enemy), Mr. Hicks demands the following Particulars:
  - a. identify the conduct Mr. Hicks performed that constitute, and/or would subject him to criminal liability for, “aiding the enemy;”
  - b. identify the precise date and time for each such instance of conduct referred to in the foregoing Particulars; and
  - c. identify the location of each such instance of conduct referred to in the foregoing particulars.

4. Relief Requested: The defense requests the Commission compel the government to provide the Bill of Particulars as set forth above regarding the three charged offenses. Such a Bill of Particulars is necessary to inform Mr. Hicks adequately of the nature of the charges against him, and the precise theories upon which the government seeks to rely with respect to those allegations, to permit him sufficient opportunity to prepare for trial, and to enable him to avoid subsequent prosecution for the same offense(s).

5. Oral Argument: The Defense requests oral argument on this motion.

By: \_\_\_\_\_  
M.D. MORI  
Major, U.S. Marine Corps  
Detailed Defense Counsel

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<sup>1</sup> Count Two alleges that Mr. Hicks “did not enjoy combatant immunity” at the time he allegedly attempted to murder unknown person or persons. Whether or not Mr. Hicks “enjoy[ed] combatant immunity” is a question of law and fact for the Military Commission to decide. As such, the government has the burden of proving beyond a reasonable doubt that Mr. Hicks did not “enjoy combatant immunity.” Count Two fails to specify why Mr. Hicks did not “enjoy combatant immunity,” *i.e.*, any factual or legal basis for that conclusion. Again, without knowledge of the specific facts upon which the government intends to rely to attempt to prove that Mr. Hicks “did not enjoy combatant immunity,” the defense cannot adequately prepare a defense to the charge.